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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 DALEEN D. WEIGHT,

12                  Plaintiff,

13                  v.

14 JO ANNE B. BARNHART, Commissioner of  
Social Security,

15                  Defendant.

16                  CASE NO. C06-5081RBL

17                  REPORT AND  
18                  RECOMMENDATION

19                  Noted for May 5, 2006

20                  This matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §  
21 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4) and as authorized by Mathews, Secretary of H.E.W.  
22 v. Weber, 423 U.S. 261 (1976). This matter is before the undersigned on defendant's motion to dismiss for  
23 lack of subject matter jurisdiction and failure to exhaust administrative remedies. After reviewing  
24 defendant's motion, plaintiff's response thereto and the remaining record, the undersigned submits the  
25 following report and recommendation for the Honorable Ronald B. Leighton's review.  
26

27                  DISCUSSION

28                  Plaintiff filed a complaint with this Court on February 9, 2006, seeking review of the denial of her

1 application for social security disability insurance benefits. (Dkt. #1-#3). On March 21, 2006, defendant  
 2 filed a motion to dismiss that complaint on the basis that this Court lacks subject matter jurisdiction over  
 3 this case due to plaintiff's failure to exhaust her administrative remedies. Specifically, defendant argues that  
 4 because the Commissioner did not issue a "final" decision in this matter, judicial review of the denial of  
 5 plaintiff's application is unavailable.

6 In this case, although plaintiff requested a hearing after her application was denied initially and on  
 7 reconsideration, she failed to appear at her scheduled hearing and her request for a hearing was dismissed.  
 8 See Declaration of Paul D. Gould and Exhibits 1-4, attached to Plaintiff's Motion to Dismiss. Plaintiff filed  
 9 a request for review of that dismissal, which was denied by the Appeals Council. Id. at Exhibit's 5-6.  
 10 Judicial review of the Commissioner's administrative decisions is governed by Section 405(g) of the Social  
 11 Security Act, which reads in relevant part:

12 Any individual, after any final decision of the Commissioner of Social Security made  
 13 after a hearing to which he was a party, irrespective of the amount in controversy, may  
 14 obtain a review of such decision by a civil action commenced within sixty days after the  
 mailing to him of notice of such decision or within such further time as the Secretary  
 may allow.

15 42 U.S.C. § 405(g); see also Udd v. Massanari, 245 F.3d 1096, 1098 (9<sup>th</sup> Cir. 2001) (judicial review limited  
 16 to final decision made after hearing).

17 Accordingly, because it appears the ALJ did not issue a final decision in this matter, judicial review  
 18 of the denial of plaintiff's disability insurance benefits application is unavailable. Indeed, plaintiff does not  
 19 object to the Court's dismissal of this action. See Plaintiff's Response to Defendant's Motion to Dismiss  
 20 (Dkt. #10). In light of the above, the undersigned recommends dismissal of this case.

#### 21 CONCLUSION

22 Based on the foregoing discussion, the court should GRANT defendant's motion to dismiss, and  
 23 dismiss this action.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 72(b),  
 25 the parties shall have ten (10) days from service of this Report and Recommendation to file written  
 26 objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
 27 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
 28 imposed by Fed. R. Civ. P. 72(b), the clerk is directed set this matter for consideration on **May 5, 2006**, as

1 noted in the caption.

2 DATED this 13th day of April, 2006.

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10 Karen L. Strombom  
11 United States Magistrate Judge  
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